IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

Bail Appl..No. 5489 of 2007(R)

CRIME NO. 297/07 OF MEDICAL COLLEGE POLICE STATION

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PETITIONER/2ND ACCUSED

RETNAMA, AGED 62 YEARS, D/O. PONNAMMA,
RESIDING AT LAKSHMI BHAVAN, EVRA 45
JAGATHY, THIRUVANANTHAPURAM.

BY ADV. SRI.BLAZE K.JOSE

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR,HIGH COURT OF KERALA
ERNAKULAM,REPRESENTING SUB INSPECTOR OF POLICE,
MEDICAL COLLEGE POLICE STATION.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 12/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5489 of 2007

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Dated this the 12th day of September, 2007

O R D E R

Application for anticipatory bail. The petitioner is the mother-in-law of the 4th accused. The defacto complainant is the mother of the th accused. The defacto complainant had pledged the title document in respect of a property belonging to her with one bank. Loan was raised. Without the knowledge of the defacto complainant the 4th accused had allegedly paid the balance amount due to the bank and had taken back the title deed. That title deed, in turn, was handed over to the first accused by the 4th accused. The first accused had raised a loan on the strength of that document in the name of the defacto complainant from another bank. The petitioner/mother-in-law of the 4th accused impersonated and pretended to be the mother of the 4th accused to avail a loan. The defacto complainant came to know about the transaction only when steps were taken by the bank to recover the amounts. Crime has been registered. Investigation is in progress.

2. The first accused has been granted regular bail as per order dt. 23.7.2007 in B.A.No.4437 of 2007. The petitioner/A2 has now

come before this Court with a claim for anticipatory bail. It is submitted that the petitioner is ill. She is absolutely innocent. In these circumstances directions under Section 438 Cr.P.C. may be issued in favour of the petitioner, a woman, it is prayed.

3. The application is opposed by the learned Prosecutor. The counsel for the defacto complainant has also appeared before Court to oppose the application. The learned Prosecutor submits that there are no features to justify the invocation of the discretion under Section 438 Cr.P.C. in this case. This is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate and then seek regular bail in the ordinary course. The counsel for the defacto complainant also vehemently opposes the application.

4. Having considered all the relevant inputs, I find no reason to invoke the extra ordinary equitable discretion under Section 438 Cr.P.C. in favour of the petitioner. Such extra ordinary equitable discretion is to be exercised only sparingly and in exceptional cases in aid of justice. Even the mere fact that if the petitioner had come before this court after arrest with an application for regular bail, she may have been granted bail is no reason

for this court to invoke the powers under Section 438 Cr.P.C. Compelling reasons must be shown to exist for invocation of such powers. Such reasons are significantly absent in this case. I am of the opinion that the petitioner must appear before the Investigating Officer or the learned Magistrate and seek the compassion of law under Section 437 Cr.P.C.

6. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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